

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Glow Hospitality, LLC,

Debtor.

Case No.: 21-60102

Chapter 11

**DECLARATION OF MATTHEW HORWITZ**

STATE OF CALIFORNIA            )  
  )ss.  
COUNTY OF LOS ANGELES    )

Matthew Horwitz, being first duly sworn upon oath, states as follows:

1. I am the Vice President of Asset Management of Pender Capital Management, LLC (“Pender”). Pender’s primary place of business is located at 11766 Wilshire Blvd, Suite 1460, Los Angeles, CA 90025. I am responsible for the account of the Debtor Glow Hospitality, LLC (“Debtor”).

**A. *The Loan Documents***

2. On June 28, 2019, Debtor and Pender East Credit 1 REIT, L.L.C. (“Pender East”) executed a Loan Agreement (the “Loan Agreement”) for Pender East to loan the sum of \$3,650,000.00 to Debtor to refinance the prior loan on the real property located at 2422 Ridgeway Avenue NW, Bemidji, MN (the “Real Property”) and finance certain capital improvements to be made. A true and correct copy of the Loan Agreement is attached hereto as **Exhibit A**.

3. On or about June 28, 2019, Debtor executed a promissory note (the “Note”) payable to the order of Pender East in the original principal amount of \$3,650,000.00 (the “Loan”). Under the terms of the Note, Debtor agreed to repay the Loan by making payments as specified in the Loan Agreement and Note. A true and correct copy of the Note is attached hereto as **Exhibit B**.

4. As a condition to making the Loan, Pender East required that Debtor secure the Loan with a mortgage on the Real Property. Accordingly, on or about June 28, 2019, Debtor, as grantor, executed a Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Filing in favor of Pender East, as lender, which was recorded on July 1, 2019, in the office of the Beltrami County Recorder as Document No. A000581152 (the “Mortgage”), covering the Real Property to secure, among other things, Debtor’s obligations under the Note and Loan Agreement. A true and correct copy of the Mortgage is attached hereto as **Exhibit C**.

5. To further secure prompt payment of the Loan, Debtor granted Pender East a lien on all of its furniture, fixtures, equipment, machinery, accounts relating to rents, contracts, inventory, general intangibles, and rental income located on the Real Property, whether any of the foregoing was then owned or acquired later, all accessions, additions, replacements, and substitutions relating to the foregoing, all records of any kind relating to any of the foregoing, all proceeds to any of the foregoing, including insurance, general intangibles, and account proceeds (collectively the “Personal Property”). See Mortgage, **Exhibit C**, ¶¶ 1-3.

6. Pender East’s liens in the Personal Property were perfected by the filing of a UCC-1 Financing Statement with the Minnesota Secretary of State on July 2, 2019, as

Document No. 1091286400030 (the “Financing Statement”). A true and correct copy of the Financing Statement is attached hereto as **Exhibit D**.

7. On December 15, 2020, Pender East transferred and assigned its rights under the Loan Agreement, Note, Mortgage, Financing Statement and other ancillary loan documents to Pender Capital Asset Based Lending Fund I, LP (“Pender Capital”). The Assignment of the Mortgage to Pender Capital was recorded with the Beltrami County Recorder’s Office on February 2, 2021 as Document No. A000596166. The assignment of the Financing Statement to Pender Capital was recorded in the Beltrami Recorder’s Office on February 1, 2021 as Document No. A000596147. Additionally, the UCC3 - Assignment of the Financing Statement was filed in the Minnesota Secretary of State’s Office on January 25, 2021 as File No. 1212759700497. True and correct copies of the Assignment Documents are attached hereto as **Exhibit E**.

8. The Loan Agreement, Note, Mortgage, Financing Statement and related documents are hereinafter collectively the “Loan Documents”.

***B. Events of Default Under the Loan Documents***

9. Debtor has a troubled history with the Real Property. The prior lender foreclosed twice previously on the Debtor and Pender East refinanced the Loan with the Debtor on the very last day of the Debtor’s redemption period in the second foreclosure action (*i.e.*, June 28, 2019). The triggering event of default in the second foreclosure action was the Debtor’s refusal to turn over financial documents including federal and state tax returns and financial statements. A true and correct copy of the Second Foreclosure Order is attached hereto as **Exhibit F**.

10. The Loan Agreement with Debtor required the Debtor to enter into a Deposit Account Control Agreement (“DACA”) and Cash Management Agreement within 45-days of closing (*i.e.*, by August 12, 2019) and deposit all revenues for the hotel operations into the DACA account or “lockbox” account. *See* **Exhibit A**, ¶¶ 18.1.6; Post-Closing Addendum at Exhibit B (page 49).

11. Although the Debtor did finally execute the DACA and Cash Management Agreement on January 8, 2020, the Debtor has never taken the steps required to deposit revenues from the hotel operations into the DACA account.

12. A Payment Reserve of \$247,000 was established at the closing of the Loan and was available for debt service payments on the Loan in the sole discretion of Pender East. *See* **Exhibit A**, ¶ 11.4. The monthly payments owing under the Loan of \$37,775.81 for the months of August, September, and October 2019 (totaling \$151,103.24) were paid out of the Payment Reserve.

13. Beginning in November 2019, the Debtor was not allowed to use the Payment Reserve because the Debtor still had not established the DACA Account and had not begun funding the account with the hotel revenues. Additionally, the Debtor had not provided financial information as required under the Loan Agreement.

14. The Debtor made the monthly payments for November 2019 (\$37,775.81 on 11/15/19), December 2019 (\$37,775.81 on 12/10/19) and January 2020 (\$37,775.81 on 1/10/20). The January 2020 payment was the last payment made by Debtor on the Loan.

15. The Loan matured on July 1, 2020 (the “Maturity Date”). *See* **Exhibit A**, ¶ 4.3.1. Debtor did not pay the full principal and all amounts due and owing under the Loan Documents as of the Maturity Date.

16. Debtor was operating a Holiday Inn Express franchise on the Real Property at the time it obtained the Loan from Pender East in June 2019. As of December 2019, the Holiday Inn Express franchise was terminated.

17. The Debtor currently operates the Real Property as the “Hotel Bemidji”. Based on the limited financial information provided by Debtor to Pender Capital, the revenues from hotel operations have significantly decreased subsequent to the loss of the Holiday Inn Express franchise.

18. Pender East commenced a foreclosure suit against Debtor in July 2020 after the Loan matured, Beltrami County District Court, Case No. 04-CV-20-1885 (the “Third Foreclosure Suit”).

19. The trial in the Third Foreclosure Suit commenced on Monday, March 22, 2021 (the “Petition Date”) and the Debtor filed bankruptcy during the afternoon of the first day of the trial thus staying the continuation of trial against the Debtor.

20. At trial, Pender Capital offered a payoff statement as of the Petition Date which was admitted into evidence (Plaintiffs’ Exhibit 20). The amount owing by Debtor as of the Petition date is \$4,157,193.07. Interest accrues at the per diem rate of \$2,534.72. The payoff does not include attorneys’ fees incurred by Pender Capital in the Third Foreclosure Suit. A true and correct copy of the Payoff Statement introduced at trial is annexed hereto as **Exhibit G**.

21. A UCC search of Glow Hospitality, LLC with the Minnesota Secretary of State’s Office conducted on March 25, 2021 disclosed a financing statement filed on July 23, 2020 as Filing No. 1168646801873 by the U.S Small Business Administration with respect to

the Debtor's personal property. A true and correct copy of the SBA's financing statement is annexed hereto as **Exhibit H**.

22. I declare under penalty of perjury that everything that I have stated in this document is true and correct.

Signed on the 25th day of March, 2021 at Los Angeles County, California, United States of America.

  
Matthew Horwitz

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**EXHIBIT A**

**LOAN AGREEMENT**

**EXHIBIT B**

**NOTE**



**EXHIBIT C**

**MORTGAGE**

**EXHIBIT D**

**FINANCING STATEMENT**

**EXHIBIT E**

**ASSIGNMENT DOCUMENTS**

**EXHIBIT F**

**SECOND FORECLOSURE ORDER**

**EXHIBIT G**

**PAYOFF STATEMENT**

**EXHIBIT H**

**SBA FINANCING STATEMENT**